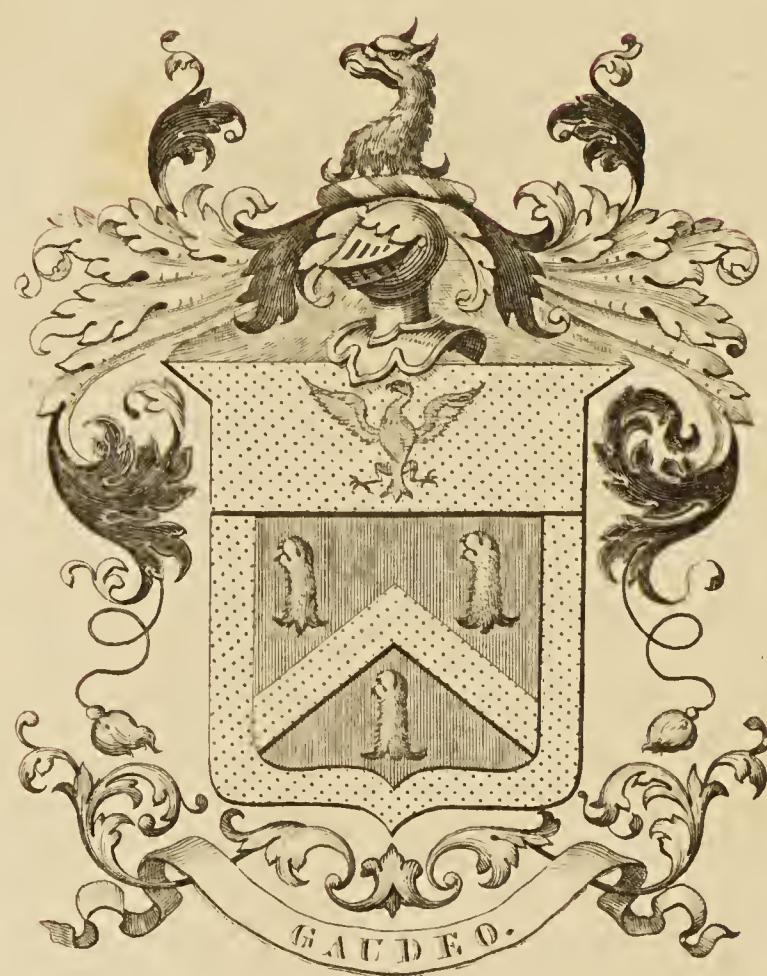
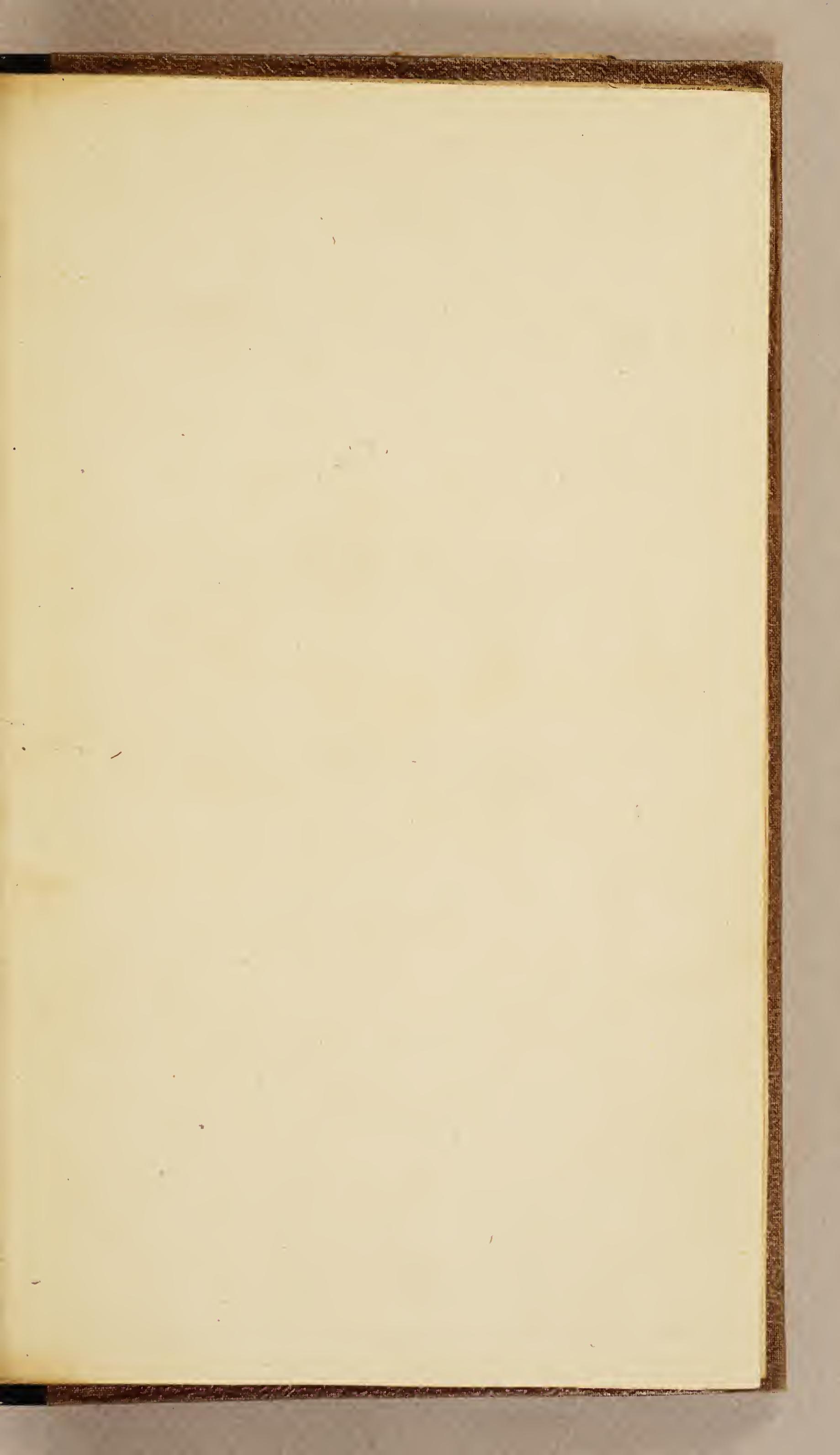


P. 10

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John Carter Brown.



16.

By Julian Flanagan Jr.

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1769 Nov 10.

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T H O U G H T S
ON THE
ORIGIN and NATURE
O F
GOVERNMENT.

Occasioned by
The late Disputes between GREAT BRITAIN
and her AMERICAN COLONIES.

Written in the Year 1766.

— VICTORque volentes
Per populos dat jura. —

VIRG.

L O N D O N:

Printed for T. BECKET and P. A. DE HONDT, in
the Strand. MDCCLXIX.



D



T H O U G H T S
O N
G O V E R N M E N T.

THE question which has been for some time agitated, *Whether the legislative power of Great Britain has a right to tax its American colonies?* is of all questions the most important that was ever debated in this country. Those who compare it to that which was discussed at the Revolution, do not sufficient justice to its importance; for it is not concerning the forms of our constitution, or the share which this or that man, or this or that family, should have in the supreme government; but whether there should be any supreme government at all, and whether this, which is now a great and independent state, should, all at once, fall from its greatness, and perhaps cease to be reckoned amongst the least.

A 2

But

4 T H O U G H T S

But although I mean in the following sheets to defend the rights of government, and to shew the Americans, and those of this country who encourage them, the unreasonableness of their late claims and pretensions, yet I do not mean to become advocate for those now entrusted with the administration of government, nor for those to whom they succeeded in that important task. On the contrary, I cannot help considering those claims, and the indecent manner in which they have been urged, as something very much to their disadvantage. Government cannot to so great a degree cease to be respected, without raising a just suspicion of its having, somehow or other, ceased to be respectable: and, to apply to political virtue what has been said by a lady of great wit, with regard to the virtue of her own sex, we must be allowed

In part to doubt the *state* that has been tried;
They come too near who come to be denied*.

* See Dodley's Collection, vol. I.

Whatever

Whatever may have given encouragement to such an attack, I am heartily sorry for it: but the attack being now made, it becomes the duty of every man who wishes well to this flourishing empire, the prosperity, the very existence of which depend upon the union of all its parts under one head, to repel the attack by all the means which law, justice, and good sense authorise.

I doubt not but this my attempt to discover what is true and what is useful, however weak and insufficient, will be generally acceptable. I do not expect it will be universally so. There is no calamity which can be supposed to befall any country, except that of being totally swallowed up by an earthquake, which may not be advantageous, and possibly desirable to some of the individuals in it. CÆSAR, whose pride and ambition were so unbounded as to make him profess that he would rather be the first man in a miserable village than be the second in Rome, would not, in all probability, have

scrupled to have adopted such measures as might have reduced that noble city to an equality with the most miserable village, rather than suffer any man in it to be his superior.

To such I do not mean to address any part of this paper. I know that any attempt to reason men out of their passions and supposed interest, is but so much ink thrown away. I only write for those, who, without ambition or resentment, suffer themselves to be inflamed by the ambition and resentment of others; and are made, by false reasoning, the promoters of interests the very reverse of their own.

The great difficulty attending this American controversy is, that the question changes upon us from day to day; and what would be a compleat answer one week, by the next is nothing at all to the purpose. Were the dispute betwixt England and America to stand upon the same ground that it did

did on the 14th of January * before two o'clock; were the colonists still to argue from the validity of their charters, and of the advantages resulting to them from thence; the laws of England might have been appealed to, and the constitution of England might have been investigated, in the practice of parliaments, from Magna Carta down to this day: but when acts of parliament are openly derided, and the authority of the supreme legislature branded with the odious appellation of *force*, we are called upon to go somewhat deeper in our reasoning, and to inquire, in what this legislative authority itself is founded.

* The first day of the last session of parliament, when Mr. PITT came unexpectedly to London, and, in a debate upon the words of an address to his Majesty, took occasion to declare, as his opinion, that the stamp duty laid upon the Americans the year before was unconstitutional and illegal, having been imposed without their own consent: an opinion, however, that was not altogether new, it having appeared before in several American pamphlets.

But before I endeavour to establish any thing of my own, it is necessary to take notice of a principle frequently laid down upon this and former occasions, as a sure foundation for political reasoning; and that is, *That all men in their natural state are free and independent*: but if we are to judge of the nature of man, as we do of the nature of other existences, by experience, there can be no foundation more unsound. No history of the past, no observation of the present time, can be brought to countenance such a *natural state*; nor were men ever known to exist in it, except for a few minutes, like fishes out of the water, in great agonies, terror and convulsions. This principle of equal right to liberty, which can hardly be separated from that of an equal right to property, has never been *actually* acknowledged by any but the very lowest class of men; who have been easily persuaded to embrace so flattering a doctrine from the mouth of a WAT TYLER or

JACK

JACK CADE, and in consequence of it, for it leads to nothing else, have cut the throats and seized the goods of their masters.

The position, however, being established, this farther has been added to it, that *all the rights of government are derived from a voluntary social contract, by which each man gives up, as it were into a common stock, a small portion of this natural liberty, in order to form a sovereign power for the protection of the whole, and of every individual.* But unfortunately, as no such state of independence was ever known to exist, no such voluntary contract was ever known to be entered into; so that if the legality of government depended upon it, it follows, that there never existed a legal government in any part of the globe.

Such are the idle dreams of metaphysicians, uncountenanced by fact and experience; and the more dangerous that, like other dreams, they carry, upon certain occa-

occasions, some confused resemblance of reality.

The rights of government are built upon something much more certain and permanent than any *voluntary* human contract, real or imaginary; for they are built upon the weakness and necessities of mankind.

THE NATURAL WEAKNESS OF MAN IN A SOLITARY STATE, PROMPTS HIM TO FLY FOR PROTECTION TO WHOEVER IS ABLE TO AFFORD IT, THAT IS TO SOME ONE MORE POWERFUL, THAN HIMSELF; WHILE THE MORE POWERFUL STANDING EQUALLY IN NEED OF HIS SERVICE, READILY RECEIVES IT IN RETURN FOR THE PROTECTION HE GIVES. This is the true nature of that contract, which pervades every part of the social world, and which is to be seen at all times, in every empire, republic, city and family, or indeed wherever two or three are met together. From this is derived all the relations of master and servant, patron and client, king and subject; and every project in public and private life

which

which does not proceed upon this reciprocal obligation of protection and service, will be for ever abortive, or fatal to the projector.

Amongst the many philosophical heads which have speculated upon the origin of that right which one man in society has been found to claim to the service of another, some have derived it from victory in war, which giving, as they say, a right to the conqueror of taking away the life of the vanquished, gives him *à fortiori* a right to his service*. But this is endeavouring to establish a right that is doubtful, by the help of one that is at least equally so; for what proof is there that one man has a natural right to kill another? The two great marks by which we judge any act to be natural, are, the general instinct or desire to perform it, and the general utility arising from the performance. But no natural desire appears in man to imbue his

* See Grotius De jure belli et pacis, lib. 3. cap. 4.

hands in the blood of his fellow creatures, nor is there any utility naturally arising from it; for nothing can be of less use than a man, when killed. I believe it will be found that the process is the very reverse of what those learned gentlemen have represented, and that any right which it is supposed one man may occasionally acquire of killing another, arises from a right previously conceived to his service. For in the great volume of nature's laws it appears to be thus written : THAT EVERY MAN IN SOCIETY SHALL RANK HIMSELF AMONGST THE RULING OR THE RULED, AS IT SHALL BEST SUIT HIS CIRCUMSTANCES AND ABILITIES; ALL EQUALITY AND INDEPENDENCE BEING BY THE LAW OF NATURE STRICTLY FORBIDDEN: AND IT IS FARTHER DECLARED BY THE SAME AUTHORITY, THAT WHO-SOEVER IS NOT ABLE TO COMMAND, NOR WILLING TO OBEY, SHALL FORFEIT HIS LIVING OR HIS LIFE: And it is probably by this law that all are condemned to die who

who fall in battle; it being only a compleat victory which determines who are exempted from the fatal sentence; by shewing who are able to command, and who are willing to obey.

These are truths not drawn from sophistical reasoning, and juggling with ill-defined words; but from plain sense and observation. By an appeal to universal experience we may prove that the relation between master and servant is of natural and of divine appointment, just as we should prove, if any body were so senseless as to doubt it, that the sun and moon were so. That which chiefly wants to be ascertained is, what is the nature and what the limits of the servitude that is due to the master, or, what it is he has a right to exact from his servant. And here necessity, the foundation of all my reasoning, obliges me to pronounce, that the sole determination of that right rests with the superior; because, if that is not allowed, it cannot under God reside anywhere; and so the union, which we suppose

suppose so necessary in society, and which comes alone from the whole body being actuated by one mind, must of course be dissolved.

I have hitherto spoken of society as if composed of one individual master and one individual servant: and as the whole law of government, that is the reciprocal obligation of protection and obedience, is made more intelligible by this simplicity, I shall often treat of it in that form. There are a great many specific differences in the various combinations of larger societies, but with regard to the great principle, the first example will apply to them all. Let the number of men who compose the society be ever so great, there is an absolute necessity in order to their remaining one society, that they be separated into two parts, with this distinction; that the governing part, always the least numerous, must act and be considered as one body, actuated by one mind; while the other, from whose great number
unanimity

unanimity is not to be expected, and for whose situations unanimity is not necessary, ought never to be considered as one body, but as so many separate persons. The individual governing to the many individuals governed, is as the brain to the members of the human body. Be the brain ever so foolish, all wisdom must be allowed there to reside; and every motion of a limb, without its dictates, is only a convulsion and a sure mark of a distempered state. In short there must exist in every society a ruling power, whose will, from the necessity of things, must be allowed the measure of its own rights, and of those of its subjects.

“ Is there then no bounds, no stay to this
“ absolute power? Has it a right to do
“ what it pleases? Has it a right to do
“ wrong?”—No certainly; for that would
be admitting an absurdity, a right of doing
what ought never to be done. We
must distinguish betwixt a right (*jus*) and
right

right (*rectum*) which, from a poverty in the English language have often added embarrassment to this subject. No act of power can turn what is wrong into what is right. But right and wrong cannot decide themselves ; they are the objects of human judgment, and must be decided by some body or other : and let what rules soever be laid down for the better decision, the rules and the subject will at last become matter of opinion. But private opinion cannot possibly be admitted ; for, all being equally entitled, no man would suffer what he called his rights to be decided by any other private opinion than his own. This is, however, the state of man in those dreadful moments, when the bonds of rule, order and society are dissolved ; a state of war and confusion, which some writers have been so senseless as to call a *state of nature*, while it is only a state of distemper and misery.

The end and intention of government is to prevent private opinion from ever taking place

place, except in matters of private concern. All the duties which one man owes to another, or which each man owes to the whole, must be marked out and decided by some tribunal to which all men must equally submit; and which, having judged, can make its judgments effectual; without which there can be no decision. After this it is needless to say that the right of making and executing all laws, the right of clearing all doubts about the lives, properties and privileges of all the members of the society, must be vested absolutely in the Supreme governing power, and that from it there can be no appeal. A law without a penalty is no more than an advice; and a penalty without a power to inflict it would be ridiculous: and this is so consonant to common sense and common language, that there is probably no language in the world in which to *prevail* and to *give law* are not synonymous.

In all societies which are made up of more than two individuals, there are two sorts of

B laws.

laws. One of these is what is framed as a rule for deciding the claims of the individuals of the society, and their duty both with respect to one another, and to the state, in matters of private right. This may be called the *civil law*, and is generally, and with great propriety delegated to inferior judges by the Supreme power ever ready at hand to support their decisions, except where they admit of an appeal to itself. The other, which may be called the *law of government* or *suprema lex*, is that by which all pretensions of right between governor and governed, in matters of government, are tried. With regard to this law, the ruleing and the ruled are exactly in the state of a society made up of two single persons: the law cannot be exactly defined; nor can the execution of it be delegated to the discretion of any body. What concerns the *safety of the whole* can never be committed to the arbitration of any of the subordinate parts; so that in all disputes betwixt the governing and the governed, concerning the limits of authority

and obedience, the governing part must, of necessity, be both judge and party.

To enquire whether this may not be attended with great inconveniences and oppression, would be extremely useless. The enquiry is cut short, by barely affirming, that it was always so, that it cannot be otherwise, and that those who are desirous of partaking the advantages arising from law and government must accept of them upon those terms, since upon no other can they be obtained.

"Are there then no natural rights of mankind independent of the despotic will of their rulers?" There certainly are a great many such rights; rights established by the laws of God and nature, of equal authority with the rights of government, which extend no farther than to the framing of such laws for particular societies, as are, in respect of the laws of nature, to be considered only as *bye-laws*: and if the terms I have used seem to intimate any thing to the contrary,

it is full time that those terms were explained. When I speak of *service* due at the will of the master, I desire to be understood of such service only as, according to the common sense, and universal practice of every age and country, one man in society may lawfully receive at the hands of another: and when I speak of the uncontrollable right in the ruler of making and executing *laws*, I would be understood to mean such laws only as are not repugnant to the laws of nature. A man by becoming an obedient subject does not cease to be a man, and as such has certainly rights which no human power can infringe without committing an act of lawless tyranny and oppression! The difficulty lies in distinguishing those constant, universal, and indefeasible rights of the species, from the ever fluctuating rights of the individuals, of which alone I have been hitherto treating; and it were to be wished, that amongst the many who now write about these rights, there were some one or other who would give himself

himself the trouble of telling us what he imagines them to be. To give a detail of them might perhaps be tedious, but not to subject myself to the same reflection, I will venture to give one general rule, formed upon the reciprocal obligations of protection and service, and supported by experience and observation upon the actual conduct and sentiments of men, by which the rights of government may be, with respect to the natural rights of mankind, in great measure, limited and defined.

WHATEVER ACT OF POWER IS EXERTED AGAINST THE SUBJECT MANIFESTLY NOT NECESSARY, OR NOT TENDING TO THE SUPPORT OR SAFETY OF GOVERNMENT, THAT IS TO THE PROTECTION OF THE WHOLE, IS, BY THE LAWS OF GOD AND NATURE, DECLARED ILLEGAL, AND A BREACH OF THE NATURAL COMPACT BETWEEN THE RULER AND THE RULED. Millions of treasure may be squandered away, thousands of lives may be sacrificed, to very little purpose, in one morning's battle; and yet the

bond between ruler and subject continue firm and unbroken ; while the smallest injury done by Government to the meanest peasant, where no necessity of state can be rationally alledged, is sufficient to throw the whole into confusion.

The Almighty seems to have said to every ruler or body of rulers upon investing them with their authority, TAKE AND PRESERVE THIS POWER, WHICH THE PEACE AND HAPPINESS OF MANKIND REQUIRE TO BE ENTRUSTED WITH SOME BODY OR OTHER; AND TAKE CARE TO USE IT IN SUCH MANNER AS *ne quid detrimenti capiat respublica*, FOR IT IS FOR THAT END, AND FOR THAT ALONE, THAT YOU ARE ENTRUSTED WITH IT. THE TASK I IMPOSE IS DIFFICULT, AND FROM WEAKNESS OF UNDERSTANDING, OR VIOLENCE OF PASSION, YOU WILL COMMIT MANY ERRORS IN THE PERFORMANCE OF IT: BUT GO ON BOLDLY, BE NOT DISCOURAGED, FOR NONE OF THOSE ERRORS SHALL BE IMPUTED TO YOU AS CRIMES,

IF YOU CAN FORGIVE YOURSELF, ALL MEN
SHALL FORGIVE YOU. BUT BEWARE
HOW YOU SUFFER THIS POWER, BY WHICH
ALONE YOU CAN PROTECT YOURSELF OR
MY PEOPLE, TO BE DIMINISHED; AND
BEWARE OF EMPLOYING IT FOR ANY
OTHER PURPOSE BUT THAT OF SUPPORT-
ING YOURSELF AND PRESERVING ORDER;
FOR ALL SUCH TRANSGRESSIONS WILL BE
ACCOUNTED AS CRIMES, AND WILL BE
PUNISHED IN YOU AS YOU WOULD PUNISH
THE LOWEST CRIMINAL.

From an inattention to these great commands have arisen all the disorders and revolutions in government with which history acquaints us: for instance,

The ravishing of men's wives and daughters was never supposed necessary for the support of Government; and therefore produced the downfall of the regal and decemviral governments of ancient Rome.

The putting a father under the cruel necessity of shooting at an apple upon his son's head, could never be supposed necessary for

the support of government, and therefore this piece of wanton insolence put an end to the Austrian rule in Switzerland.

The forcing men, under severe penalties, to profess this or that speculative opinion in matters of eternal salvation, contrary to what they believe true, could never be supposed by any but ideots, necessary for the support of government; and we all know what the foolish attempt occasioned to the Spanish dominion in the Low Countries, and to the regal authority of the STEWARTS in Great Britain.

Do you ask who has a right to judge what acts of power are against nature, and what are not? I answer, no body. The immediate impulse of every man's feelings stands in the stead of all judgment in such cases; and when the passions of men are all raised by one motive, and all pointed to one end, they require no leader to give them unity of mind and uniformity of conduct; while those whose proper office it is to wield the sword in defence of government,
partaking

partaking of the common feelings, either desert their employers, or, by a dubious and feeble assistance, serve to render their ruin more compleat.

But, of all the transgressions or neglects of nature's laws, none have been so fatal to rulers as that breach of the original compact, in being unwilling or unable to give that protection, to which the duty of obedience must be ever subsequent or secondary. In forming that social compact, which is the foundation of all my reasoning, the proposal is not, *If you will be obedient I will be powerfull*, for that would be too absurd to deserve any notice; but it is, *If you are powerfull I will be obedient*; and this being the order of the conditions, the first not being forthcoming, the second becomes void and null of itself. For in the whole Code of nature there is no law more distinctly expressed than this:

*Ne liceat facere id quod quis vitiabit agendo
Publica lex hominum naturaque continet loc fas
Ut teneat vetitos inficitia debilis actus* *.

* Persius sat. 5.

Which

Which means, when applied to government, that THEY ONLY HAVE, BY NATURE, A RIGHT TO RULE WHO ARE QUALIFIED FOR IT, it being high treason against nature for the weak to pretend to govern the strong, the foolish the wise, the ignorant the skilful, the fearful the bold, or the poor the rich. To retain the rights of government, without the powers from whence those rights were originally derived, is the greatest of crimes against society; and which, society and its divine guardian never fail to punish, according to the degree of the offence, that is, according to the inconveniences and dangers to which society is exposed by such ineffectual pretensions.

Such are the laws which will ever supersede all laws of human contrivance, and which being broken, by any ruler or rulers, the original compact is dissolved, and no farther allegiance due. But what have those laws of nature to do with the present controversy

controversy between the British government and its subjects of America? *The original compact*, it is said, *has been broken*. When? By what means? Whose ass has been stolen, whose wife has been ravished, whose conscience has been constrained, by act of parliament? What protection has been required from the legislature of Great Britain, that has not been willingly and manfully afforded? None. *We are taxed*, say the Americans, *contrary to right, for we are taxed without our own consent*. Were they fairly to tell us upon what they found this pretended right, of laying burthens upon themselves according to their own pleasure and conveniency, it would be no hard task to combat it; but when we have got fast hold of what we suppose the main argument, and are ready to squeeze it to death, it immediately slips like an eel through our fingers. *It is, at one time, by the law of nature*. When you ask them to quote the page, or shew them some law of nature which speaks the very reverse, *it is then by the*

the constitution of Britain. There when they are shewn that the solemn declarations of the legislature, and the constant practice, wherever it was necessary, speak against them, they declare themselves against all those solemn declarations and practices, telling us, *That what has been done, if wrongfully done, confers no right to repeat it*, and back again they go to *their laws of nature*, or to the flimsy hypothesis of some scholastic writer to new-model nature and the constitution of England, so as to make them more favourable to their pretensions. For my part I know of no human authority to which I dare appeal, except to acts of Parliament; and, if they could be admitted, there would be soon an end of the controversy; as the present parliament has as unquestionable an authority as any of the former parliaments; and the Stamp Act itself of as much authority as any former act which could be quoted to authorise it.

It being therefore, useless to deduce any argument

argument from an authority, the disclaiming of which furnishes the very question in debate, I will return once more to my general plan, and enquire what is the true nature of levying taxes, and whether it differs, as has been often asserted by the Americans, from the other rights of legislation.

To take up this in a plain, easy, and regular way, let us return to the point from whence we set out. In a state consisting of one individual ruler, and one individual subject, like that of ROBINSON CRUSOE and his man FRIDAY, the service of one of these in return for the protection of the other, can be only personal; and the mode, as well as the quantity, of this service must be left, as has been shewn before, to the discretion of the superior; whose will must serve for all the different sorts of law, either with regard to public or private rights, which the nature of that simple society can possibly admit. But, in a numerous society, it would be extremely inconvenient, not to say absurd, that all the subjects should be personally employed in the public service; as such

such employment must necessarily hinder them from providing for their own support. Nor is such a generality of personal service any more needful than it is possible; as a very few of a numerous community are sufficient to do all that is required for the defence and protection of the whole. But as all are equally liable, and the letting the whole labour fall upon a few, would be unjust and ruinous, it became necessary that each man in the community should contribute a certain portion of the product of his private industry, for the maintenance of those, who being occupied in fulfilling the general obligation, of serving or assisting the protecting power, have not sufficient leisure to provide subsistence for themselves. In short, a TAX, in whatever mode it may appear, is but another word for SERVICE; and as that enters essentially into the very Being of government; whatever concerns the appointing, regulating, or rendering it effectual, becomes the most important part of legislation; and which, from the nature of

of things, no inferior part of administration, much less the subjects, have the least right to meddle with, except under the supreme authority. Were the supreme authority to resign this power of the purse into the hands of any other part of the society, such a resignation would amount to an abdication of the government; and that part which became invested with the power of levying money, would be, *ipso facto*, supreme. These I give as fundamental principles of government, and do not desire them to be admitted if they are not found to be in fact universally true. Point me out but one single instance of a state where a right was acknowledged in any, but the supreme power, of imposing or with-holding taxes, and I shall immediately give up all that is contained in these reasonings as false; they being entirely grounded upon a principle that does not admit of such a possibility.

What then becomes of the notion, *That people ought not to be taxed but by their own consent?*

consent? I cannot tell; let those look to the proposition who advance it. I can only say that any set of people who are masters of their own purses, are masters of their own services, they are their own masters, and subject to no body. If ever such people had engaged themselves in a compact of service and protection, such compact subsists for them no longer; they are perfectly independent, and any verbal acknowledgement of superiority from them, after the *actual* acknowledgement is thus withdrawn, is no better than a piece of mockery. In short, from those who are really subjects such consent never was nor ever can be asked. It will be said that *the people of England consent to their own taxation by their representatives.* But this is nothing but a vulgar misapprehension; the consent of the people being no more required in England, upon such occasions, than it is in Turkey: and, indeed, if the principles of Government which I have laid down as general, are not equally true, and equally, *in fact,* admitted in England

England and in Turkey, I shall no longer acknowledge them as principles. The sole difference is that the supreme power happens to be differently constituted in those two different states, but when constituted, it equally assumes the right of imposing taxes upon the people without their consent. The people of England, or certain classes of them, have a right by election to constitute the third part of the legislative power for seven years; and it would make no difference in my argument if they constituted the whole for that term: but from the day of election, the people have no more share in the legislation than those of Turkey, and the strings of their purses are equally resigned into the hands of their rulers. It may be perhaps said, that if these members of parliament abuse the confidence that is put in them, the people may at the end of seven years elect others in their stead. But this does not in the least affect the present question, which is not what is to happen after

C the

the supreme legislative power is dissolved; but what happens while it actually subsists. When a parliament is dissolved, the people must proceed to the election either of the same or other Members; but whoever they elect will have the same unlimited power with their predecessors; and, although the persons may be changed, the constitution of the government and the rights of the governors and the governed are perpetual, and are no more changed along with the Members of parliament, than they are in Turkey, when one Sultan, in that military democracy, is deposed by his constituents the Janizaries, and another set up in his place. So far from the consent or opinion of the people of England being more particularly necessary in this species of legislation than in any other, that all who know any thing of the practice of parliament, must know that it is a constant rule not to admit any petition, however humbly conceived, against any bill in deliberation for levying money, while this
priviledge

priviledge is allowed upon almost every other occasion *.

In order to shew in its utmost extent, and unembarrassed by any accidental circumstances, the frivolousness of the vulgar notion that the people of England keep the possession of their own purses, and give their consent to their own taxation by their representatives ; I have supposed that every ditcher in the country, and every chimney-sweeper in town gives his vote for electing Members of the House of Commons, Peers of the realm, and if you please, the King likewise, for the space of seven years ; and have shewn, that with all these suppositions,

* There are instances of petitions having been received, as in the case of the excise upon wine and tobacco, in 1733, and of the excise upon cyder, in 1763, which may be urged in contradiction to what is here asserted. But those petitions were not admitted as against the taxes themselves, but only as against the mode of collecting them.

they would be taxed without their own consent, as much as if they lived under the Great Turk. After this it may seem superfluous and foreign to my purpose, to shew that this supposed *representation*, even with regard to the House of Commons, is very far from being true, and that the word *Virtual*, which has been clapped in, to supply this defect, has no meaning at all; but as this subject has furnished, and may still furnish matter for dispute, I cannot let it pass without some animadversion.

The first parliaments in England after the Norman conquest, were composed of these only who held lands *in capite* under the crown. They were few in number; being according to Dooms-day book not above 700, and might have all been assembled together in one place without any inconveniency.

By the time of King JOHN, the number of freeholders or tenants *in capite* was greatly increased, but that principle of their all
having

having a right to be summoned to parliament, which we suppose to have been the original constitution, still subsisted; for thus we read in KING JOHN's Magna Carta: *and for holding the common Council of the kingdom for assessing aids or for imposing scutages, we will cause to be summoned Archbishops, Bishops, Abbots, Earls, and greater Barons, separately, by our letters; and we will cause to be summoned, in general, by our sheriffs and bailiffs, all those who hold of us in capite.* This is the full account of the members of parliament according to Magna Carta, which, as it is understood to be a declaration of the common law of the land, and of the liberties of Englishmen in the best times, free from any abuses that might have been before introduced, we may rely upon this description as the genuine constitution of parliament at the time. But here is no representation: every man who came to parliament, either by particular or general summons, came of his own right, as the peers do to this day; nor could the word or idea

of a *representative* be known amongst them.

There is reason to believe that the clause for calling by general summons the smaller barons or freeholders to parliament was inserted into Magna Carta by the particular will of King JOHN *, in order to break and counteract the power of the greater Barons, who were at that time very troublesome to the crown. Accordingly, in the Magna Carta of the first year of his son HENRY the III, the whole clause concerning the constitution of parliament is omitted, and instead of it is inserted a sort of notice that *this matter was by the advice of his Bishops and great Lords reserved for more mature consideration.* But although there was a Magna Carta granted in the 16th, and another

* See the preliminary articles presented by the Barons to King John, compared with his Magna Carta, in the appendix to an *Essay on the constitution of England*, second edition, printed for T. Becket and P. A. de Hondt, London, 1766.

in the 18th of this King's reign ; there is no farther mention made of it. Whether it was that the great Barons prevailed too much during this unhappy reign, to permit the smaller to take any share with them in the legislative power, or whether their great number made their assembling impracticable, is what our ancient historians do not sufficiently inform us. But towards the end of this reign the smaller freeholders were ordered to chuse and send commissioners from each shire, to represent in parliament all those who were absent.

Here was a change in the form of parliament, but none in the principle. The knights commissioners represented the freeholders only, who, whether present or absent, held the same place in the state as under King JOHN's Magna Carta.

This method, however, of election, in order to carry on with more conveniency, what was in itself ancient and constitutional, gave hint for producing what was of a newer kind. There was one great acknowledged

and constitutional power in the ancient kings of England, without which it would have been impossible to have preserved the government from being entirely aristocratical, and that was, the power of chusing who should come to parliament and who should not ; or, at least, of adding what new members of parliament they thought fit. Almost at the same time that it was found useful to summon the smaller freeholders to appear by their commissioners ; the King, by his letters patent, erected a few, we shall say, for distinctness, one borough, of those which were of his own domain, and particularly dependent upon him, into a body corporate ; and gave it, amongst other priviledges, that of chusing something equivalent to a baron to sit in parliament. But this elected baron represented nothing but his own townsmen ; and if he assisted in taking the money out of the purses of other towns, which he certainly did, he must have done it by some other right than that of representing them. And although this one baron was multiplied in

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the course of time to a great number, yet with regard to those who do not chuse them, they all stand upon the same footing with the first. But some of those barons are of no more ancient standing than the reign of King CHARLES the II. and some of the most opulent towns of England send none to this day ; yet it never came into any bodies head to fancy that the money levied from them for the publick service, was illegally and unconstitutionally levied.

But to return to my freeholders. Were I to stop my history of Representation here, my reader might possibly go off with an opinion, that it was a fundamental principle of the English constitution, that every freeholder should sit in parliament, either in person, or in the person of one whom he had concurred in chusing. But this was not the ancient idea of this matter. The freeholders sat in parliament as the POWERS OF THE STATE, and when they ceased to be powerful, they ceased to be qualified. This is manifest in the act of parliament of the 8th

Henry

Henry the VI. for restricting the number of voting freeholders to those who were possessed of 40 shillings a-year at the least ; the preamble of which runs thus : *Whereas the election of knights of the shires to come to parliament of our Lord the King, in many counties of the realm of England, have now, of late, been made by very great outrageous and excessive number of people dwelling within the same counties of the realm of England, of the which most part was of people of small substance, and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy Knights and Esquires dwelling within the same counties; whereby manslaughter, riots, batteries, and divisions among the gentlemen and other people of the same counties shall very likely rise and be, unless convenient and due remedy be provided in this behalf **.

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* By several circumstances to be learnt from ancient records, it appears that sending or being sent to parliament was reckoned, if not a burthen, at least a privilege

This act was very wisely intended to give a stability to the constitution, which, by a constant

priviledge very little worth the contesting with those who thought fit to claim it. For this reason the law was for some ages very loose and uncertain, as well with regard to the number of the representatives, as with regard to the number and quality of their electors, while a variety of other privileges, which now appear to us of much less consequence, were most jealously guarded by express statutes. There is no room to doubt but that the constituents of the Great Council or parliament were originally no other than the king's immediate vassals; but after the smaller sort of them came to be represented by a few persons elected at meetings called by the sheriff in the county town, others who held their lands, by free tenures, under other Lords, and who had been used to attend the county-courts upon other occasions, were, by degrees, under the common title of freeholders, jumbled amongst the King's tenants in the election of the county member. Nor would probably this growing abuse have been attended to, even in the reign of Henry the VI. as parliamenteering was still an unprofitable trade, had it not been productive of those dangerous tumults related in the above preamble.

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constant increase of the constituents, was gradually changing; but unhappily by supposing a stability in the value of money, it produced an effect the very reverse of what was intended. By the most moderate calculation, a piece of land which was then worth two pounds *per annum*, would be now worth twenty, so that there is a possibility

In Scotland, where the laws and constitution, formed anciently upon the model of those of England, have not undergone the same changes, the King's tenants *in capite* are alone capable of electing, or being elected, Knights of the shires. They, though few in number, are the only persons represented in parliament; and by a peculiar attention of the law of Scotland to their qualifications, they are, in great measure, the same class of men, who, by the ancient constitutions both of England and Scotland, were alone entitled to be consulted in any act of legislation. Estimating the present rents of Scotland at only the double of their ancient valuation in the Exchequer rolls; one elector of a county member must hold, by a royal charter, as great a quantity of land as would qualify thirty-three voters in England, upon a like occasion.

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of there being now ten legal voters for a knight of the shire for one that there was in the time of Henry the VI. But although these are legal voters by the letter of the law, they are not so by the spirit of the ancient constitution, which plainly intended to lop off nine out of ten of them; and consequently no argument can be drawn from their present multiplicity, with regard to the necessity of all freeholders being represented.

I pass over the labourers, the farmers, and even the copy-holders of land, who have no vote in chusing those who impose taxes upon them; I pass over the many inhabitants, even of those towns which send members, who have no vote in chusing those members, or in chusing those who chuse them, and hasten to examine what is called a *virtual representation*, by which all those notorious deficiencies in the real one are to be patched up.

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It is said that all the lands of England, being divided amongst the freeholders, they become by that means the *virtual representatives* of all those who live upon these lands; and by that *virtual representation*, have a right of giving laws to the whole, and to which the whole, by a sort of tacit or *virtual compact*, give their consent.

If this is a principle of government, it will be true in every application of it, and if it is not found true in every application, I would advise those who use it to lay it aside as a principle, and to look out for something else that will better bear this necessary test.

The freeholders, as ordered to be summoned to parliament by King JOHN's Magna Carta, were, it seems, the *virtual representatives* of every man in the kingdom. We do not know precisely what their number was, and the knowledge is certainly not at all necessary for verifying the principle of *virtual representation*, which will be equally true, whether their number be great or small.

They were possibly at that time two or three thousand. Suppose they had been only seven hundred, as in the 20th year of the Conqueror, or suppose them seventy, or if peradventure they had been only seven, then these seven must be acknowledged to be the *virtual representatives* of the whole. What signifies so much higling : let us come to the matter at once, and suppose all the lands held by one freeholder ; as is actually the case in Turkey. Then is the GRAND SIGNOR *virtual representative* of all the people of Turkey, their universal knight of the shire, and, in a most parliamentary manner, levies what taxes he pleases upon them, *by their own consent*.

I would not here be thought to mean any reflection upon the GRAND SIGNOR or his rights ; I am not, thank God, so great a bigot to the form of government under which I was born and bred, as to look upon any other form with contempt or abhorrence. Far from it. While that great prince exercises his rights for the order, peace, and happiness of his people, he is the good and faithful

faithful servant of the truly sovereign power, and merits the respect of all men, whether they receive any benefit from his superintendency or not. What I find ridiculous in this process, and what would never enter into the head of the most senseless Mussulman, is, that he should enjoy these extended rights over his people by the unintelligible and useless fiction of being their *virtual representative.*

I have taken a great deal of pains to shew that the notion of people consenting to their own taxation is contrary to the nature of government, and unsupported by any fact. I have been at pains to shew that the notion of the legislative power acting by virtue of representation, is no principle in the British constitution; and I have finished by shewing that the words *virtual representation*, either mean nothing at all, or mean a great deal more than those who use them would be willing to admit: and yet, after all my pains,

my American antagonists are as much out of my reach as before.

The truth is, that having heard them so often repeat that they were Englishmen, entitled to all the rights of Englishmen, so as to be taxed, like Englishmen, *by their own consent*: I was misled to believe that they wanted to be represented, like other Englishmen, in the British parliament. But upon a closer examination, I find they have no such meaning. *Each American colony, say they, has a parliament of its own, though we have hitherto called them only assemblies: each has its house of Commons chosen by the people, and which has alone the right of raising money from them; each has its council or house of peers; and each has its King, to wit, his Majesty King GEORGE the III. who, as he cannot preside in so many parliaments at once, is represented in each by his Excellency the Governor.* We did not, say they, sail the wide Atlantic Ocean, to leave the free constitution of England behind us; no, we carried it along with us, and—

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There cannot be imagined a question more important for the safety and happiness of mankind in general, than that which is the subject of these sheets, and yet there is perhaps no question, the solution of which requires less learning and subtlety, nor any, which is more within the compass of a plain and sound understanding. The principles upon which it is to be discussed are universal, comprehensive, and applicable to every possible case; and every opposition to them is immediately reducible to a falsity in point of fact, or an absurdity in point of reasoning. If there is found any difficulty in applying them to the present case of America, it arises only from this, that the Americans are either not able or not willing to tell us with any degree of firmness and consistency, what they are, and what they would be at. One moment they desire no more than what belongs to every British subject; the next they refuse to be taxed like other British subjects, and each colony requires a parliament of its own. At one time they acknowledge

acknowledge their subjection to Great Britain ; and almost in the same breath, endeavour to prove that each petty colony has a right to be her equal. One moment they bar all considerations of force from being admitted in deciding the rights of sovereigns and subjects; and the next endeavour to establish what they call their rights by a variety of outrages, such as were never imputed to any established government of the most arbitrary kind. At one time an American claims the rights of an Englishman ; if these are not sufficient, he drops them, and claims the rights of an Irishman ; and, when those do not fully answer his purpose, he expects to be put upon the footing of a Hanoverian.

To support, by turns, this variety of contradictory pretensions, a variety of principles no less contradictory, are by turns produced. First they try to found the extraordinary privileges they claim upon *birth-right*; but when they are shewn that by *birth* they had no *right* to desert their native country,

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they drop the birth-right, and bring forth their *charters*. When they are shewn that these charters are no other than what are given to every common corporation and trading company, they then cease to be charters, and become all at once *compacts*. At one time it is the love of liberty that made them take shelter in those distant climes, from the *tyranny of prerogative*; yet when we ask them with whom they made those *compacts* just mentioned; they tell us, with a King JAMES or a King CHARLES. How must the great shades of ALGERNOON SIDNEY and JOHN LOCK exclaim, how must they rage in their independent mansions, to hear that there should be *Englishmen* who pretend to read and admire their writings, and yet understand them so little as to own that they had entered into a *compact*, or as these patriots would call it, a *conspiracy*, with a King, in order to obtain a dispensation from the laws of the land, and the authority of parliament!

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The assertion that these charters are not charters, but *Pacta conventa*, is brim-full of absurdity. For, passing over the manifest illegality already hinted, of one part of the sovereign power dispensing with the authority of the whole ; the whole sovereign power could not, by the nature of things, enter into any indefeasible compact of that sort. Nor is this more to be considered as matter of reasoning than as matter of language. Sovereignty admits of no degrees, it is always *supreme*, and to level it, is, in effect, to destroy it ; I mean with regard to those who suffer it to be levelled : for, as to sovereignty itself, it is unsusceptible of destruction ; and, like the sun, only sets in one place, that it may rise, with full splendour, in another. *Pacta conventa* cannot, with any propriety, subsist, but amongst parties independent of one another ; nor are they then of much significance, unless there be, at the same time, some despotic power provided, for explaining any difficulty that might arise concerning the several conditions

of the agreement, and for enforcing the observance of them. Without such an effectual arbitrator, a covenant between two independent powers, is no other than a Treaty, which is no longer to be relied on than while it suits with the conveniency of both the parties to observe it. In case of any misunderstanding, there lies no appeal but to the God of battles, whose decision only suspends the suit till a future term, when the party that was cast may find the means of entering a new action.

But enough of these abstractions. One good example of a real covenant between two sovereign states will give more light into the nature of *Pacta conventa* in general, and may perhaps contribute more to elucidate the particular subject of this paper, than a thousand pages of general reasoning and description.

Since the creation of the world there never was a more voluntary, more deliberate, more legal, and more solemn paction than

than that which was made by the union of the two ancient and independent kingdoms of England and Scotland; nor any whose articles had a better title to be religiously observed. But immutability in human affairs is contrary to the nature of them, and every attempt to produce it, is an attempt to counteract the providence of God by the wisdom of man.

In this solemn paction there was one article absolutely necessary for binding and cementing the whole, according to the general intention of the covenanting parties; but which at the same time threw every other particular article loose. I mean that article which settled the constitution of the British parliament, and gave it as absolute and supreme an authority, to decide in all the concerns of the now united kingdom, as the several parliaments had in those kingdoms when separate. To this uncontroulable power was entrusted, amongst other things, the guardianship of the other articles of the union, with the sole right of explaining

their meaning and intention, in case any doubt should arise concerning them; without reserving to any man, or any number of men, the least right to rejudge their judgments. To actuate this great body, and to procure a perfect and lasting union, such a directing soul was absolutely necessary; and that such has been the idea always conceived of it, by the wisdom of the united nation, will appear by the following instance.

In the year 1725, an act passed in the British parliament for extending the malt-tax to Scotland, where a malt-tax was as new as a stamp-tax was last year in America. This innovation had been objected to on a former occasion *, by many of the Scottish peers and members of parliament, supported by others, who, for the sake of opposing the administration, pretended to take a share in their grievances, and joined with them in declaring this tax a breach of the articles

* In the year 1713.

of the Union, which, they said, parliament had no right to infringe, it being upon those *Pacta conventa* that the authority of the British parliament itself was established; and that they being broken, the *original compact* was dissolved. In answer to this it had been said; that nothing was meant against the Union or its articles, but that it was apprehended the tax proposed was entirely within the spirit and intention of those articles; and whether it was or was not, could only be determined by the majority of both houses with his Majesty's concurrence. It was accordingly voted a legal as well as expedient mode of taxation.

But many of the people in Scotland judging in this matter very differently from their rulers; declared the tax to be illegal, and swore they never would consent to the payment of it; never considering that their pretensions to infallibility were no better founded than those of the British parliament, and that their pretensions to authority were much worse. Nor did they content themselves with

with this verbal denunciation, but when the officers attempted to levy the tax, they put them to flight with blows and insulting language ; at the same time pulling down the houses, destroying the furniture, and threatening the lives of such of their countrymen as had concurred in passing the Act. What would our American friends have advised government to do in this case ? To repeal the Act, because the Scotch mob pronounced it illegal ; or to try by pamphlets, or by repeated letters in the Daily Gazetteer, to convince them they were in the wrong ? No, this folly and outrage was treated in a manner much more consistent with the nature and dignity of parliament, which requires from subjects obedience, and not reasoning. There were sent to Glasgow, where the pretended standard of liberty was set up, some companies of foot, and some troops of dragoons, with a sensible and spirited officer at their head, who, *pulveris exigui jactu*, soon brought those mistaken reasoners to a better understanding concerning the rights

rights of the supreme legislature, than all the eloquence of CICERO or MANSFIELD, without such an accompaniment, could have effected.

This the gentlemen of America will say is *club law*. I will not dispute it. They may call it by what name they please, but there never was a question of supremacy decided by any other sort of law. Those who try to separate law from force, attempt impiously to put those asunder whom God has been pleased to join ; and as the reasonings of such men are never correspondent to any facts that have gone before ; so are their own actions never correspondent to their reasonings. Is it to argument or club law, to which the *respectable populace* of Boston and Rhode-island trust the justice of their cause ? Is it argument to demolish the houses or destroy the goods of those who differ from them in opinion ; or is it argument to carry them to *the tree of liberty*, and there oblige them to take God to witness to sentiments not their own, for fear of being immediately

immediately put to death? These are outrages which none but the most ignorant and distempered imaginations could ever dread from any kind of established government, and yet are committed by those, who, in the very height of their riots, complain of cruel and arbitrary exertions of power in the mild government of Great Britain, under the most just and humane of Kings.

In the course of this enquiry I have often used the word *Colony*, in speaking of those parts of the British empire which lie on the other side of the Atlantick ocean, and have done so in compliance with the present mode of America, upon a supposition that the essence of things being known, the terms to express them become matters of indifference. But this, I acknowledge, is a very ill grounded supposition, and to proceed upon it extremely dangerous: for nothing is more serviceable to the cause of falsehood than the admission of improper terms, which, though at first admitted only as counters, having received

received a currency, will be afterwards tendered to us as sterling coin. By virtue of this heathen word *colony*, the example of Roman colonies has been urged in favour of American claims ; and when these have not been found perfectly favourable to independence, recourse has been had to Greek colonies, which, indeed, had little other relation to their mother-country, than a sort of cousinship, such as the Jews, in the time of the Maccabees, claimed with the Lacedemonians ; claimed when they stood in need of their assistance, and perhaps was never mentioned by them either before or since. But all this parade of Greek and Roman learning comes to nothing, when we are informed that the districts in question are not properly *colonies* either in word or in deed. Their most ancient English and legal name is *plantations*, and they have always been, in fact, *provinces*, governed by a lieutenant or governor, sent by the King of Great Britain, and recalled by him at pleasure. Nor are they entitled to participate of those many

advantages which they enjoy as Englishmen by virtue of their British descent, but from a much more solid and rational principle, their being faithful subjects of Great Britain; since the same advantages are by law expressly communicated to such of them as were born in Westphalia and the Palatinate, and who never set foot upon British ground till they meet with it on the other side of the Atlantic. In these and in many other respects they are widely different from either Greek or Roman colonies; so that whoever is really acquainted with the affairs of those ancient nations, must without difficulty perceive, that the Americans have preferred the word *Colony*, for the sake of assuming along with it a degree of independency, which from the words *plantation* or *province*, could not be so easily derived.

The plain truth is, that those countries, let them be called *plantations*, *settlements*, *colonies*, or by what other name they will, are, from their nature and situation, only subordinate parts in the empire of Britain,
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and such they would necessarily continue, though perhaps in a much lower degree, under some other powerful European state, in case their more safe and honourable tie, with what they are still pleased to call, their *Mother Country*, should happen to be dissolved.

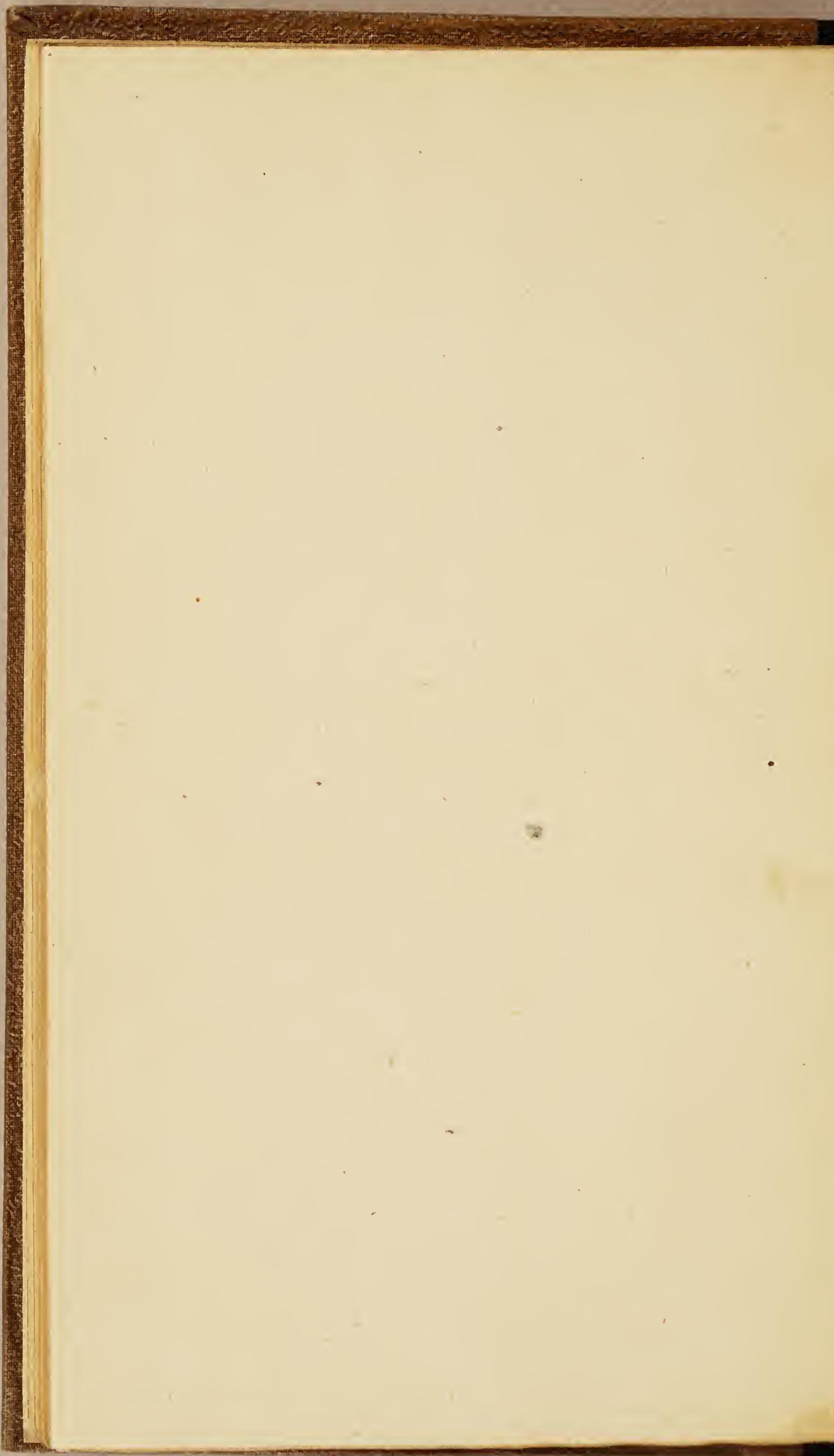
I shall therefore conclude with saying, that the separation of Great Britain from her American appertinencies would be destructive of the prosperity and liberty of both. If so, it seems to follow that till such time as New England is strong enough to protect Old England, and the seat of the British empire is transferred from London to Boston, there is an absolute necessity that the right of giving law to America, should continue to be vested in Great Britain. That it is the interest of Great Britain to protect and cherish her American provinces instead of oppressing them, is an undeniable truth; and it is, perhaps, no less true, that some farther attention, and some farther means of communication,

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communication, are still wanting to that desirable end: but let every true friend to Britain and to all her connexions stand forth in defence of her great legislative uncontrollable power, without which no union, and of course no safety, can be expected.

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